including the Department of Energy for NRC review of DOE sites under UMTRCA. However, as stated in response to similar comments (See FY 1992 Final Rule, 57 FR 32695) NRC is currently precluded under the Independent Offices Appropriation Act (IOAA) from assessing Part 170 fees to Federal agencies for specific services rendered. The NRC currently assesses annual fees under 10 CFR Part 171 to Federal agencies if those agencies have a license or approval/certificate from the NRC; however, OBRA–90 limits annual fee assessments to NRC *licensees*. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming, site had been achieved. Therefore, effective with the FY 1994 final rule published July 20, 1994, DOE is being assessed for costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under 10 CFR Part 171.

The Commission has recommended in its report submitted to Congress on February 23, 1994, that either OBRA–90 be modified to remove costs from the fee base for services to other Federal agencies or the Atomic Energy Act be modified to permit the NRC to assess application and other fees for specific services rendered to all Federal agencies.

For the reasons stated above, the NRC has denied this petition.

Dated at Rockville, Maryland, this 24th day of April, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–10477 Filed 4–27–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0065–93]

RIN 1545–AS46

Exceptions to Passive Income Characterization for Certain Foreign Banks and Securities Dealers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers. This document affects persons who own direct or indirect interests in certain foreign corporations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 10, 1995. Outlines of oral comments to be presented at the public hearing scheduled for August 31, 1995 at 10 a.m. must be received by August 10, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0065–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0065–93), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ramon Camacho at (202) 622–3870; concerning submissions and the hearing, Ms. Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A passive foreign investment company (PFIC) is any foreign corporation that satisfies either the income test or asset test in section 1296(a) of the Internal Revenue Code (Code). Under the income test, a foreign corporation is a PFIC if 75 percent or more of its gross income for the year is passive income. Sec. 1296(a)(1). Alternatively, a foreign corporation is a PFIC if 50 percent or more of the average value of its assets for the taxable year produce passive income or are held for the production of passive income. Sec. 1296(a)(2). Under section 1296(b)(1), passive income is foreign personal holding company income as defined in section 954(c) of the Code, and includes dividends, interest, certain rents and royalties, and gain from certain property transactions, including gain from the sale of assets that produce passive income.

Under section 1296(b)(2)(A), income earned in the active conduct of a banking business by a foreign corporation licensed to do business as a bank in the United States and, to the extent provided in regulations, by other corporations engaged in the banking business is not passive. Notice 89–81, 1989–2 CB 399, (Notice) described rules to be incorporated into subsequent regulations that would expand this exception to certain foreign banks not licensed to do a banking business in the United States. The rules contained in § 1.1296–4 of the proposed regulations would implement section 1296(b)(2)(A) for banking activities conducted by foreign corporations.

In 1993, Congress added section 1296(b)(3)(A) to the Code, effective for taxable years beginning after September 30, 1993. See Omnibus Budget Reconciliation Act of 1993 (1993 Act), Pub. L. 103–66, section 13231(d), 107 Stat. 312, 499. The provision treats as nonpassive any income derived in the active conduct of a securities business by a controlled foreign corporation (CFC) if the CFC is a U.S. registered dealer or broker and, to the extent provided in regulations, a CFC not so registered. The rules contained in § 1.1296–6 would implement section 1296(b)(3)(A).

Section 956A, added by the 1993 Act, requires each U.S. shareholder of a CFC to include in income its pro rata share of the CFC's excess passive assets. Under section 956A(c)(2), a passive asset is any asset that produces passive income as defined in section 1296(b). An asset that generates nonpassive income under § 1.1296–4 or § 1.1296–6 of the proposed regulations will be nonpassive for purposes of section 956A.

Explanation of Provisions

I. Description of Proposed Rules for Foreign Banks

A. General Rule

Section 1.1296–4(a) of the proposed regulations provides generally that, for purposes of section 1296(a)(1), passive income does not include banking income earned by an active bank or by a qualified affiliate of such a bank. For this purpose, an active bank is either a corporation that possesses a license issued under federal or state law to do business as a bank in the United States, or a foreign corporation that meets the licensing, deposit-taking, and lending requirements of paragraphs (c), (d), and (e), respectively, of § 1.1296–4.

The proposed rules generally adopt the deposit, lending, and licensing standards contained in the Notice. These standards are consistent with the provisions of the Code that define a bank as an institution that accepts deposits from and makes loans to the public and is licensed under state or federal law to conduct banking activities. See e.g., sec. 581. The IRS and Treasury believe that Congress intended

to grant the banking exception only to corporations that conform to a traditional U.S. banking model.

However, the proposed rules liberalize the approach taken in the Notice in several ways. Most significantly, the proposed rules adopt subjective tests to measure whether the corporation meets the deposit-taking and lending requirements. The IRS and Treasury rejected reliance on objective tests such as those in the Notice after learning, through several ruling requests pursuant to the Notice, that objective standards may cause legitimate banks to be treated as nonbanks.

Because of the rigidity of the objective tests, the Notice permitted the IRS to rule in rare and unusual circumstances that a foreign corporation was an active bank even though it failed to satisfy the requirements of the Notice. The proposed regulations do not adopt this procedure because the IRS and Treasury believe that the enhanced flexibility of the proposed rules should permit all foreign corporations actively conducting a licensed banking business (whether directly or through affiliates) to qualify for the bank exception.

B. Licensing Requirement

A foreign corporation that is not licensed in the United States satisfies the licensing requirements of § 1.1296–4(c) if it is licensed or authorized to accept deposits from residents of the country in which it is chartered or incorporated, and to conduct, in such country, any of the banking activities described in the proposed regulations. However, a corporation fails this licensing test if one of the principal purposes for its obtaining a license was compliance with the requirements of this section.

The IRS and Treasury believe that being licensed as a bank by a bank regulatory authority is strong evidence that a corporation is a bank. The proposed regulations therefore adopt a licensing test to distinguish banks from investment funds.

C. Deposit-Taking Test

A foreign corporation satisfies the deposit-taking test of § 1.1296–4(d) if it regularly accepts deposits in the ordinary course of its trade or business from customers who are residents of the country in which it is licensed or authorized. In addition, the amount of deposits shown on the corporation's balance sheet must be substantial. Section 1.1296–4(d)(3) provides that whether the amount of deposits on a corporation's balance sheet is substantial depends on all the facts and circumstances, including whether the capital structure and funding of the bank as a whole are similar to that of comparable banking institutions engaged in the same types of activities and subject to regulation by the same banking authorities.

The proposed regulations adopt this deposit-taking test in part to distinguish banks from finance companies, which do not accept deposits. This distinction between finance companies and banks is required by Congress. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 641 (1993) (noting that the banking, insurance, and securities exemptions ''do not apply to income derived in the conduct of financing and credit services businesses''). Although the IRS and Treasury believe that deposit-taking is a key attribute of all active banks, they also recognize that subjective tests will better accommodate the various types of banks that have developed as a result of different banking systems and regulatory frameworks.

The proposed regulations introduce flexibility to the deposit-taking requirements in several ways. First, the requirement that the amount of deposits be substantial is more flexible than the Notice requirement that deposits constitute at least 50 percent of the total liabilities of the bank. The IRS and Treasury recognize that a bank's funding preferences may be affected by market conditions and regulatory requirements and believes that an institution may be properly treated as an active bank even if deposits do not constitute the institution's primary source of funding.

Second, unlike the Notice, the proposed regulations do not include any special rules for interbank deposits but treat them like any other deposit, regardless of whether they are received from persons who are members of a related group as defined in § 1.1296–4(i)(4). The IRS and Treasury believe this change is appropriate because the acceptance of interbank deposits from related or unrelated persons on an arm's length basis is a banking activity normally engaged in by banks. In addition, the impact of a rule that distinguishes between interbank deposits received from related persons and those received from unrelated persons is diminished where deposit-taking activity is not measured with a bright-line test.

Finally, the proposed rules change the Notice requirement that a corporation must hold deposits from at least 1,000 persons who are bona fide residents of the country that issued the corporation's banking license because this requirement proved troublesome for certain private banks with clientele from several countries. The requirement was intended to address cases where a bank is licensed by a country but not allowed to accept deposits from its residents. In the IRS and Treasury's view, such an entity should not be treated as an active bank for purposes of section 1296 because it is not accorded full bank status by the bank authorities that issued its banking license. However, the IRS and Treasury believe that a bright-line deposit standard is not necessary to address this concern. Instead, the proposed regulations require that a corporation regularly accept deposits from residents of the country in which it is licensed.

D. Lending Test

A foreign corporation satisfies the lending test of § 1.1296–4(e) if it regularly makes loans to customers in the ordinary course of its trade or business. This is a change from the Notice's requirement that loans to unrelated persons make up more than 50 percent of the corporation's loan portfolio. The lending test is necessary to distinguish banks, which extend credit to customers, from corporations that merely invest. However, such a distinction can be drawn without relying on a bright-line standard such as that contained in the Notice.

In order to distinguish loans from investments for purposes of these rules, the proposed regulations provide that a note, bond, debenture or other evidence of indebtedness is a loan only if it is received by the corporation on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of the corporation's banking business. Debt instruments treated as securities for purposes of the corporation's financial statements generally are not loans.

E. Banking Income and Activities

Section 1.1296–4(f)(1) provides that banking income is gross income derived from the active conduct of any banking activity as defined in § 1.1296–4(f)(2). These activities include all of the activities treated as banking activities in the Notice, with no material changes, except that finance leasing is included as a banking activity.

The proposed regulations do not adopt the Notice's rule that all of the U.S. effectively connected income earned by a foreign corporation in the active conduct of a trade or business pursuant to a U.S. bank license automatically is nonpassive. One effect of this rule was that effectively connected income earned by a U.S.-licensed bank from transactions with related parties would have been banking income, while income earned by non-

U.S.-licensed banks from similar related-party transactions would not have been banking income. Because the proposed regulations generally do not differentiate between related party and non-related party transactions in the same way as the Notice, the only effect of the rule would have been to treat, in the case of U.S. licensed banks only, as banking income the income earned on transactions with related parties who are not customers and income earned from activities (such as securities activities) that are not banking activities described in § 1.1296–4(f). The IRS and Treasury believe that the standards for determining whether income is derived in the active conduct of a banking business should be the same for all corporations that are either active banks or qualified bank affiliates.

The IRS and Treasury are aware that many bank activities may also be considered securities activities. Under the proposed regulations, an entity that performs an activity that is both a banking activity and a securities activity must satisfy only the requirements of the bank rules to treat income from such activity as nonpassive. For example, an entity that derives income from dealing in foreign exchange may treat such income as nonpassive if it is an active bank (or a qualified bank affiliate) even though it is not a controlled foreign corporation.

Dealing in securities, however, is not included as both a banking activity and a securities activity. The IRS and Treasury believe that Congress intended that income from dealing in securities should be nonpassive only if it is earned by a controlled foreign corporation that actively conducts a securities business and meets the other requirements of section 1296(b)(3)(A).

The IRS and Treasury have become aware that certain developing country economies impose high deposit reserve requirements as a tool for implementing monetary policy. Because the central banks of these countries require the maintenance of such reserves as a prerequisite to conducting a banking business, the earnings on such assets, if any, should appropriately be excluded from passive income.

F. Customer Relationship

Under the proposed regulations, a bank satisfies the deposit and lending tests only if it carries on such activities with customers. Moreover, only the income from its banking activities (and those of its qualified bank affiliates) conducted with, or for, customers will produce nonpassive income. This is a change from the Notice requirement, under which activities qualified only if they were conducted with unrelated parties. Under the proposed regulations, a customer may be any person, related or unrelated, if that person has a customer relationship with the bank. Whether such a relationship exists depends on all the facts and circumstances. However, persons who are related to, or who are shareholders, officers, directors, or other employees of, the corporation will not be treated as customers of the corporation if one of the principal purposes for the corporation's transacting business with such persons was to qualify the corporation as an active bank or qualified bank affiliate.

G. Affiliates of Active Banks

The IRS and Treasury recognize that many active banks conduct one or more banking activities through separately incorporated affiliates that may not individually qualify as active banks. Accordingly, the proposed regulations provide rules under which income from banking activities may be treated as nonpassive if earned by a corporation that does not qualify as an active bank but is a member of a related group of which an active bank is also a member. However, such income is nonpassive only for purposes of determining whether any member of the related group is a passive foreign investment company or for purposes of applying the excess passive asset rules of section 956A(c)(2)(A). In addition, such income remains passive with respect to persons who own stock in the affiliate but who are not members of the related group of which the affiliate is a member.

For purposes of these rules, a related group is any group of persons related within the meaning of section 954(d)(3), substituting person for controlled foreign corporation. This definition is a departure from the affiliated group definition of the Notice because it permits noncorporate entities (such as partnerships) to count as members of the group for purposes of satisfying the groupwide gross income test.

Section 1.1296–4(i)(2) requires the bank affiliate to generate more than 60 percent of its income from banking, insurance and securities activities (but not other financial services). For purposes of this test, the look-through rules of sections 1296(c) and 1296(b)(2)(C) do not apply. This requirement ensures that a bank affiliate's eligibility for the bank exception depends upon the business activities conducted directly by the affiliate, and is not influenced by activities conducted by related persons. However, a bank affiliate may nevertheless apply sections 1296(c) and 1296(b)(2)(A) to determine whether it is a PFIC under the income or asset tests of section 1296(a).

In addition, the related group must meet two gross income tests for the exception to apply. First, under § 1.1296–4(i)(3)(i), income from banking activities derived by active banks must constitute at least 30 percent of the financial services income earned by group members. Second, under § 1.1296–4(i)(3)(ii), income earned by group members from banking activities, securities activities, and insurance activities must constitute at least 70 percent of the financial services income earned by group members that are financial services entities. The regulations adopt the definition of financial services income contained in § 1.904–4(e), which includes only income earned by financial services entities.

These affiliate rules are structurally similar to the affiliate rules contained in the Notice, but have been modified in several respects to respond to taxpayer comments. For example, the 80 percent stock ownership threshold of the Notice caused many corporations to be treated as PFICs solely because the gross income of subsidiaries in which the group owned less than an 80 percent interest was excluded for purposes of the Notice's gross income tests, even though the group had voting control of such subsidiaries. The adoption of a lower 50 percent ownership threshold for group membership in the proposed regulations recognizes that international groups are not organized to meet the 80 percent threshold required for consolidation under U.S. tax law.

In addition, the gross income tests were changed in several ways to deal with problems encountered by diversified affiliated groups. First, the denominators of the fractions now include only financial services income, which by its terms includes only income earned by financial services entities. This change prevents foreign corporations that are part of a banking group from being disqualified solely because the group is a subgroup of a larger group that does not perform solely financial services.

Second, the numerator of the fraction for the groupwide gross income test now includes gross income from securities and insurance activities in addition to banking activities. This change prevents a foreign corporation engaged in banking activities that is part of a banking subgroup from being disqualified solely because it is part of a larger group that provides a broad range of financial services.

Finally, the proposed rules drop the Notice requirement that an active bank be a group member for 5 years before its income may count towards satisfaction of the gross income tests. Since PFIC status is determined annually, the IRS and Treasury believe that whether a group is a banking group should depend only on its status during the current taxable year.

H. Income From Nonbanking Activities

As in the Notice, § 1.1296–4(j) of the proposed regulations provides that income derived from the conduct of activities other than banking activities described in § 1.1296–4(f)(2) and income from assets held for the conduct of such activities are nonpassive only to the extent provided in section 1296.

J. Effective Date

Section 1.1296–4 is proposed to be effective for all taxable years beginning after December 31, 1994. However, taxpayers may apply § 1.1296–4 to a taxable year beginning after December 31, 1986, but must consistently apply § 1.1296–4 to such taxable year and all subsequent years. While application of § 1.1296–4 to a year beginning after December 31, 1986, cannot affect the tax liability of a taxpayer for any closed taxable year, a taxpayer may apply § 1.1296–4 to a closed taxable year for the purpose of determining whether a foreign corporation is a PFIC in calculating the taxpayer's liability for an open taxable year.

II. Exception for Income Earned in a Securities Business

A. General Rule

Section 1.1296–6(a) of the proposed regulations provides generally that securities income earned by an active securities dealer, active securities broker or qualified securities affiliate is nonpassive. As required by section 1296(b)(3)(C), the rules apply only for purposes of determining whether a controlled foreign corporation (as defined in section 957(a)) is a PFIC with respect to its United States shareholders (as defined in section 951(b)), or for purposes of determining whether an asset is passive under section 956A(c)(2).

B. Active Securities Dealer and Active Securities Broker

Under § 1.1296–6(b)(1), an active dealer or broker is a dealer or broker that meets certain licensing requirements.

Section 1.1296–6(c) defines a securities dealer as a dealer in securities within the meaning of section 475(c)(1). Under § 1.1296–6(d), a securities broker is a foreign corporation that stands ready to effect transactions in securities and other financial instruments for the account of customers in the ordinary course of its trade or business during the taxable year. A securities dealer or broker is licensed under § 1.1296–6(b) if it possesses a U.S. license to do business as a securities dealer or broker in the United States or if it is licensed or authorized in the country in which it is chartered or incorporated to conduct one or more securities activities described in § 1.1296–6(e)(2) with residents of that country. The conduct of such activities must be subject to bona fide regulation, including appropriate reporting, monitoring and prudential requirements, by a securities regulatory authority that regularly enforces compliance with such standards.

C. Securities Income & Securities Activities

Section 1.1296–6(e)(1) provides generally that securities income means the gross income derived from the active conduct of any securities activity that constitutes a trade or business. The list of securities activities contained in § 1.1296–6(e)(2) generally is consistent with the legislative history to section 1296(b)(3)(A). See H.R. Rep. No. 111, 103d Cong., 1st Sess. 704 (1993).

Section 1.1296–6(e)(2)(iv) includes as an additional securities activity the maintenance of a capital deposit required under foreign law as a prerequisite to acting as a broker in that jurisdiction. Without this rule, a broker that is not also a dealer could be a PFIC under section 1296(a)(2) even though the majority of its income is commission income. This rule applies only if significant restrictions exist on the use of its capital. Thus, working capital will not qualify as a deposit for purposes of this rule.

In general, only income from transactions entered into with, or on behalf of, persons with whom the corporation has a dealer-customer relationship may be treated as nonpassive. Section 1.1296–6(g) adopts without change the definition of dealer-customer relationship contained in the bank rules.

Under § 1.1296–6(h) of the proposed regulations, income and gain from a security identified as held for investment under section 475(b)(1)(A) or which is not held for sale within the meaning of section 475(b)(1)(B) is passive. Because the identification rules of sections 475(b) and 1.475(b)–1T and 1.475(b)–2T apply, the rules governing identification of inventory securities in Notice 88–22, 1988–1 CB 489 and Notice 89–81, 1989–2 CB 399 do not apply with respect to taxable years beginning after September 30, 1993. However, the inventory identification rules of Notice 89–81 and Notice 88–22 will continue to apply for taxable years beginning before October 1, 1993.

D. Matched Book Income

Section 1.1296–6(i) of the proposed regulations provides special rules for determining a securities dealer's income from certain matched transactions. These rules are adopted in order to eliminate a potential opportunity for abuse that arises from the manner in which a matched book repo business is conducted by securities dealers.

A matched transaction is defined as a sale and repurchase agreement with respect to the same security, entered into by the controlled foreign corporation in the active conduct of its trade or business and properly treated as offsetting agreements in a matched book. In a typical repurchase agreement a taxpayer sells a security and, at the same time, agrees to repurchase an identical security from the purchaser at a price in excess of the taxpayer's sales price. In a reverse repurchase agreement, a taxpayer purchases a security and concurrently agrees to sell an identical security to the seller at a price in excess of the taxpayer's purchase price. A taxpayer who keeps a matched book generally enters into offsetting repurchase and reverse repurchase agreements involving identical securities. Such taxpayers act as intermediaries by matching persons who need cash for a short period with those who need securities for the same period.

Under the proposed regulations, securities income includes only the net (not gross) income from matched transactions. Without the proposed regulation's netting rule, related groups that are predominantly engaged in passive activities could easily meet the gross income tests contained in the qualified affiliate rules because a CFC conducting a matched book business will earn large amounts of gross income, even though net economic income from matched book activities is comparatively small.

E. Affiliates of Dealers or Brokers

Like banks, securities dealers and brokers frequently operate through separately incorporated subsidiaries that may not qualify independently as active securities dealers or brokers but which form part of an integrated securities business conducted by an active dealer or broker. Accordingly, the proposed regulations contain rules that extend the

securities dealer/broker exception to certain qualified affiliates of active securities dealers or brokers. These rules generally mirror the qualified bank affiliate rules contained in § 1.1296–4(i), except that they extend the securities dealer/broker exception only to qualified securities affiliates that are CFCs, as required by section 1296(b)(3)(A).

F. Income From Nonsecurities Activities

Section 1.1296–6(k) of the proposed regulations provides that income derived from the conduct of activities other than securities activities described in § 1.1296–6(e)(2) and income from assets held for the conduct of such activities are nonpassive only to the extent provided in section 1296.

G. Effective Date

The rules contained in § 1.1296–6 are proposed to be effective for taxable years beginning after September 30, 1993.

III. Look-Through Rules

The proposed regulations do not contain guidance regarding the look-through rules of sections 1296(c) and 1296(b)(2)(C) or the grouping rules of section 956A(d). In general, the proposed regulations also do not address whether, and to what extent, look-through principles may apply to characterize income from a partnership as nonpassive and an interest in a partnership as a nonpassive asset, except to the extent that section 475 may treat a partnership as a securities dealer. Because these issues are not unique to financial institutions, the IRS and Treasury will address them in future regulations of more general application. The IRS and Treasury solicit comments on the proper scope and application of look-through and grouping concepts to banks, securities dealers and securities brokers.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 31, 1995, at 10 a.m., in the Internal Revenue Service Auditorium, 7400 corridor. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 10, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Ramon Camacho, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Sections 1.1291–10T, 1.1294–1T, 1.1295–1T, and 1.1297–3T and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1291–10T also issued under 26 U.S.C. 1291(d)(2).
Section 1.1294–1T also issued under 26 U.S.C. 1294.
Section 1.1295–1T also issued under 26 U.S.C. 1295.
Section 1.1296–4 also issued under 26 U.S.C. 1296(b)(2)(A).
Section 1.1296–6 also issued under 26 U.S.C. 1296(b)(3)(A).
Section 1.1297–3T also issued under 26 U.S.C. 1297(b)(1). * * *

§ 1.1291–0T [Redesignated as § 1.1291–0]

Par. 2. Section 1.1291–0T is redesignated as § 1.1291–0.

Par. 3. Newly designated § 1.1291–0 is amended as follows:

1. The section heading for newly designated § 1.1291–0 is revised.

2. The introductory language for newly designated § 1.1291–0 is revised.

3. Entries for §§ 1.1296–4 and 1.1296–6 are added in numerical order.

The revisions and additions read as follows:

§ 1.1291–0 Passive foreign investment companies—table of contents.

This section lists headings under sections 1291, 1294, 1296 and 1297 of the Internal Revenue Code.

* * * * *

§ 1.1296–4 Characterization of certain banking income of foreign banks as nonpassive.

(a) General rule.
(b) Active bank.
(1) U.S. licensed banks.
(2) Other foreign banks.
(c) Licensing requirements.
(d) Deposit-taking requirements.
(1) General rule.
(2) Deposit.
(3) Substantiality of deposits.
(e) Lending activities test.
(f) Banking income.
(1) General rule.
(2) Banking activities.
(g) Certain restricted reserves.
(h) Customer relationship.
(i) Income earned by qualified bank affiliates.
(1) General rule.
(2) Affiliate income requirement.
(3) Group income requirements.
(4) Related group.
(j) Income from nonbank activities.
(k) Effective date.

§ 1.1296–6 Characterization of certain securities income.

(a) General rule.
(b) Active dealer or broker.
(1) General rule.
(2) U.S. licensed dealers and brokers.
(3) Other dealers and brokers.
(i) General rule.
(ii) Licensing requirements.
(c) Securities dealer.
(d) Securities broker.
(e) Securities income.
(1) General rule.
(2) Securities activities.
(f) Certain deposits of capital.
(g) Dealer-customer relationship.
(h) Investment income.

* * * * *

Par. 4. Section 1.1296–4 is added to read as follows:

§ 1.1296–4 Characterization of certain banking income of foreign banks as nonpassive.

(a) *General rule.* For purposes of section 1296, banking income earned by an active bank, as defined in either paragraph (b) (1) or (2) of this section, or by a qualified bank affiliate, as defined in paragraph (i) of this section, is nonpassive income.

(b) *Active bank*—(1) *U.S. licensed banks.* A corporation (whether domestic or foreign) is an active bank if it is licensed by federal or state bank regulatory authorities to do business as a bank in the United States. A foreign corporation will not satisfy the requirements of this paragraph (b)(1) if, under its federal or state license or licenses, the foreign corporation is permitted to maintain only an office, such as a representative office, that is prohibited by federal or state law from taking deposits or making loans.

(2) *Other foreign banks.* A foreign corporation is an active bank if it meets the licensing requirement of paragraph (c) of this section and it actively conducts, within the meaning of § 1.367(a)–2T(b)(3), a banking business that is a trade or business within the meaning of § 1.367(a)–2T(b)(2). In order for the business conducted by a foreign corporation to be considered a banking business, the foreign corporation must also meet the deposit-taking requirements of paragraph (d) of this section and the lending requirements of paragraph (e) of this section.

(c) *Licensing requirements.* To be an active bank under paragraph (b)(2) of this section, a foreign corporation must be licensed or authorized to accept deposits from residents of the country in which it is chartered or incorporated and to conduct, in that country, one or more of the banking activities described in paragraph (f)(2) of this section. However, in no case will a foreign corporation satisfy the requirements of this paragraph (c) if one of the principal purposes for its obtaining a license or authorization was to satisfy the requirements of this section.

(d) *Deposit-taking requirements*—(1) *General rule.* To be an active bank under paragraph (b)(2) of this section—

(i) A foreign corporation must, in the ordinary course of the corporation's trade or business, regularly accept deposits from customers who are residents of the country in which it is licensed or authorized; and

(ii) The amount of deposits shown on the corporation's balance sheet must be substantial.

(2) *Deposit.* Whether a liability constitutes a deposit for purposes of this paragraph (d) is determined by reference to the characteristics of the relevant instrument and does not depend solely on whether the instrument is designated as a deposit.

(3) *Substantiality of deposits.* Whether the amount of deposits (including interbank deposits) shown on a corporation's balance sheet is substantial depends on all the facts and circumstances, including whether the corporation's capital structure and funding sources as a whole are similar to that of banking institutions engaged in the same types of activities and subject to the jurisdiction of the same bank regulatory authorities.

(e) *Lending activities test.* To be an active bank under paragraph (b)(2) of this section, a corporation must regularly make loans to customers in the ordinary course of its trade or business. A note, bond, debenture or other evidence of indebtedness will be treated as a loan for purposes of this section only if the debt instrument is received by the corporation on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of the corporation's banking business. Such debt instruments generally will not be considered loans for purposes of this section if the instruments are not treated as loans (but are classified as securities or other investment assets, for example) for purposes of the foreign corporation's financial statements.

(f) *Banking income*—(1) *General rule.* Banking income is the gross income derived from the active conduct (within the meaning of § 1.367(a)–2T(b)(3)) of any banking activity described in paragraph (f)(2) of this section.

(2) *Banking activities.* For purposes of this section, the following are banking activities—

(i) Lending activities described in paragraph (e) of this section;

(ii) Factoring evidences of indebtedness for customers;

(iii) Purchasing, selling, discounting, or negotiating for customers notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(iv) Issuing letters of credit and negotiating drafts drawn thereunder for customers;

(v) Performing trust services, including activities as a fiduciary, agent or custodian, for customers, provided such trust activities are not performed in connection with services provided by a dealer in stock, securities or similar financial instruments;

(vi) Arranging foreign exchange transactions (including any section 988 transaction within the meaning of section 988(c)(1)) for, or engaging in foreign exchange transactions with, customers;

(vii) Arranging interest rate or currency futures, forwards, options or notional principal contracts for, or entering into such transactions with, customers;

(viii) Underwriting issues of stock, debt instruments or other securities under best efforts or firm commitment agreements for customers;

(ix) Engaging in finance leases, as defined in § 1.904–4(e)(2)(i)(V);

(x) Providing charge and credit card services for customers or factoring receivables obtained in the course of providing such services;

(xi) Providing traveler's check and money order services for customers;

(xii) Providing correspondent bank services for customers;

(xiii) Providing paying agency and collection agency services for customers;

(xiv) Maintaining restricted reserves (including money or securities) as described in paragraph (g) of this section; and

(xv) Any other activity that the Commissioner determines, through a revenue ruling or other formal published guidance (see § 601.601(d)(2) of this chapter), to be a banking activity generally conducted by active banks in the ordinary course of their banking business.

(g) *Certain restricted reserves.* A deposit of assets in a reserve is, for purposes of this section, a banking activity if the deposit is maintained in a segregated account in order to satisfy a capital or reserve requirement under the laws of a jurisdiction in which the corporation actively conducts (within the meaning of § 1.367(a)–2T(b)(3)) a banking business that is a trade or business (within the meaning of § 1.367(a)–2T(b)(2)). A deposit of assets into a reserve qualifies under this paragraph (g) if and only to the extent that the assets are not available for use in connection with the corporation's banking business because of significant

regulatory restrictions on the investment of such assets. This paragraph (g) does not apply to ordinary working capital, which is available for unrestricted use.

(h) *Customer relationship.* Whether a customer relationship exists is determined by reference to all the facts and circumstances. Such a relationship does not exist with respect to transactions between members of a related group, as defined in paragraph (i)(4) of this section, or transactions with any shareholders, officers, directors or other employees of any person that would otherwise be treated as an active bank or qualified bank affiliate if one of the principal purposes for such transactions was to satisfy the requirements of this section.

(i) *Income earned by qualified bank affiliates*—(1) *General rule.* A foreign corporation that is not an active bank but which derives banking income, as defined in paragraph (f)(1) of this section, is a qualified bank affiliate for purposes of this section if such corporation meets the requirements of paragraph (i)(2) of this section and the related group of which it is a member meets the requirements of paragraph (i)(3) of this section. Banking income earned by a qualified bank affiliate is nonpassive only for purposes of determining whether any member of the related group is a passive foreign investment company or holds stock in a passive foreign investment company or for purposes of applying section 956A(c)(2)(A). However, banking income of a qualified bank affiliate remains passive with respect to persons who own stock in that affiliate but who are not members of the related group of which the affiliate is a member.

(2) *Affiliate income requirement.* To be a qualified bank affiliate, at least 60 percent of the foreign corporation's total gross income for the taxable year must be banking income, securities income, as defined in § 1.1296–6(e)(1), or gross income described in section 1296(b)(2)(B) (relating to insurance activities). For purposes of applying this paragraph (i)(2), the look-through rules of sections 1296(b)(2)(C) and 1296(c) do not apply.

(3) *Group income requirements.* The related group qualifies under this paragraph (i) if—

(i) At least 30 percent of the aggregate gross financial services income, as defined in § 1.904–4(e)(1), earned during the taxable year by members of the related group is banking income earned by active banks who are members of the related group during the current taxable year; and

(ii) At least 70 percent of the aggregate gross financial services income earned during the taxable year by members of the related group is banking income, securities income, or gross income described in section 1296(b)(2)(B)(relating to insurance activities).

(4) *Related group.* The related group is the group of persons consisting of the entity being tested under this paragraph (i) and all entities that are related within the meaning of section 954(d)(3) to such entity, substituting ''person'' for ''controlled foreign corporation'' each time the latter term appears.

(j) *Income from nonbank activities.* Income derived from the conduct of activities other than banking activities described in paragraph (f)(2) of this section and income from assets held for the conduct of such other activities are nonpassive only to the extent otherwise provided in section 1296.

(k) *Effective date.* This section is effective for taxable years beginning after December 31, 1994. However, taxpayers may apply this section to a taxable year beginning after December 31, 1986, but must consistently apply this section to such taxable year and all subsequent years.

Par. 5. Section 1.1296–6 is added to read as follows:

§ 1.1296–6 Characterization of certain securities income.

(a) *General rule.* For purposes of section 1296, securities income earned by an active dealer or active broker, as defined in paragraph (b) of this section, or a qualified securities affiliate, as defined in paragraph (j) of this section, is nonpassive income. This section applies only for purposes of determining whether a controlled foreign corporation, as defined in section 957(a), is a passive foreign investment company with respect to its United States shareholders as defined in section 951(b), or for the purpose of determining whether an asset is passive under section 956A(c)(2)(A).

(b) *Active dealer or broker*—(1) *General rule.* A securities dealer, as defined in paragraph (c) of this section, or a securities broker, as defined in paragraph (d) of this section, is an active dealer or an active broker for purposes of this section if it meets the requirements of either paragraph (b) (2) or (3) of this section.

(2) *U.S. licensed dealers and brokers.* A securities dealer or securities broker (whether foreign or domestic) is an active dealer or an active broker if it is registered as a securities dealer or broker under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities dealer or broker under section 15C(a) of such Act.

(3) *Other dealers and brokers*—(i) *General rule.* A securities dealer or a securities broker is an active dealer or an active broker if it meets the licensing requirements of paragraph (b)(3)(ii) of this section and actively conducts, within the meaning of § 1.367(a)–2T(b)(3), one or more securities activities, as defined in paragraph (e)(2) of this section, as a trade or business within the meaning of § 1.367(a)–2T(b)(2).

(ii) *Licensing requirements.* To be an active dealer or an active broker under paragraph (b)(3) of this section, a securities dealer or securities broker must be licensed or authorized in the country in which it is chartered, incorporated or organized to conduct one or more of the securities activities described in paragraph (e)(2) of this section with residents of that country. The conduct of such activities must be subject to *bona fide* regulation, including appropriate reporting, monitoring and prudential (including capital adequacy) requirements, by a securities regulatory authority in that country that regularly enforces compliance with such requirements and prudential standards.

(c) *Securities dealer.* For purposes of this section, a securities dealer is a dealer (whether foreign or domestic) in securities within the meaning of section 475(c)(1).

(d) *Securities broker.* For purposes of this section, a securities broker is a corporation (whether domestic or foreign) that, during its taxable year, stands ready, in the ordinary course of its trade or business, to effect transactions in securities and other financial instruments for the account of customers, including the arrangement of loans of securities owned by customers.

(e) *Securities income*—(1) *General rule.* Securities income means the gross income (except as provided in paragraph (i) of this section) derived from the active conduct (within the meaning of § 1.367(a)–2T(b)(3)) of any securities activity described in paragraph (e)(2) of this section.

(2) *Securities activities.* For purposes of this section, the following are securities activities—

(i) Purchasing or selling stock, debt instruments, interest rate or currency futures or other securities or derivative financial products (including notional principal contracts) from or to customers and holding stock, debt instruments and other securities as inventory for sale to customers, unless the relevant securities or derivative financial products (including notional

principal contracts) are not held in a dealer capacity;

(ii) Effecting transactions in securities for customers as a securities broker;

(iii) Arranging futures, forwards, options, or notional principal contracts for, or entering into such transactions with, customers;

(iv) Arranging foreign exchange transactions (including any section 988 transaction within the meaning of section 988(c)(1)) for, or engaging in foreign exchange transactions with, customers;

(v) Underwriting issues of stocks, debt instruments, or other securities under best efforts or firm commitment agreements with customers;

(vi) Purchasing, selling, discounting, or negotiating for customers on a regular basis notes, drafts, checks, bills of exchange, acceptances or other evidences of indebtedness;

(vii) Borrowing or lending stocks or securities for customers;

(viii) Engaging in securities repurchase or reverse repurchase transactions with customers;

(ix) Engaging in hedging activities directly related to another securities activity described in this paragraph (e)(2);

(x) Repackaging mortgages and other financial assets into securities and servicing activities with respect to such financial assets (including the accrual of interest incidental to such activities);

(xi) Engaging in financing activities typically provided by an investment bank, such as—

(A) Project financing provided in connection with, for example, construction projects;

(B) Structured finance, including the extension of a loan and the sale of participations or interests in the loan to other financial institutions or investors; and

(C) Leasing activities to the extent incidental to financing activities described in this paragraph (e)(2)(xi) or to advisory services described in paragraph (e)(2)(xii) of this section;

(xii) Providing financial or investment advisory services, investment management services, fiduciary services, trust services or custodial services;

(xiii) Providing margin or any other financing for a customer secured by securities or money market instruments, including repurchase agreements, or providing financing in connection with any of the activities listed in paragraphs (e)(2)(i) through (e)(2)(xii) of this section;

(xiv) Maintaining deposits of capital (including money or securities) described in paragraph (f) of this section; and

(xv) Any other activity that the Commissioner determines, through a revenue ruling or other formal published guidance, to be a securities activity generally conducted by active dealers or active brokers in the ordinary course of their securities business.

(f) *Certain deposits of capital.* A deposit of capital is, for purposes of this section, a securities activity if the deposit is maintained in a segregated account in order to satisfy a capital requirement for registration as a securities broker or dealer under the laws of a jurisdiction in which the broker or dealer actively conducts (within the meaning of § 1.367(a)–2T(b)(3)) a trade or business (within the meaning of § 1.367(a)–2T(b)(2)) as a securities broker or dealer. A deposit of capital qualifies under this paragraph (f) if and only to the extent that the assets are not available for use in connection with the controlled foreign corporation's activities as a securities broker or dealer because of significant regulatory restrictions on the investment of such assets. This paragraph (f) does not apply to ordinary working capital, which is available for unrestricted use.

(g) *Dealer-customer relationship.* Whether a dealer-customer relationship exists is determined by reference to all the facts and circumstances. Such a relationship does not exist with respect to transactions between members of a related group, as defined in paragraph (j)(4) of this section, or transactions with any shareholders, officers, directors or other employees of any person that would otherwise be treated as an active dealer, active broker or qualified securities affiliate if one of the principal purposes for such transactions was to satisfy the requirements of this section.

(h) *Investment income.* Income earned on any securities held for investment within the meaning of section 475(b)(1)(A) or not held for sale within the meaning of section 475(b)(1)(B), is passive for purposes of sections 1296(a)(1), 1296(a)(2) and 956A(c)(2)(A).

(i) *Calculation of gross income from a matched book.* Securities income includes only the net (not gross) income from matched transactions. For purposes of this section, a matched transaction is a sale and repurchase agreement with respect to the same security properly treated as offsetting agreements in a matched book.

(j) *Income earned by qualified securities affiliates*—(1) *General rule.* A foreign corporation that is not an active dealer or an active broker but which derives securities income described in paragraph (e)(1) of this section is a qualified securities affiliate for purposes of this section if such corporation meets the requirements of paragraph (j)(2) of this section and is a member of a related group that meets the requirements of paragraph (j)(3) of this section. Securities income earned by a qualified securities affiliate is nonpassive only for purposes of determining whether any member of the related group is a passive foreign investment company or holds stock in a passive foreign investment company or for purposes of applying section 956A(c)(2)(A). However, securities income of a qualified securities affiliate remains passive with respect to persons who own stock in that affiliate but who are not members of the related group of which the affiliate is a member.

(2) *Affiliate income requirement.* To be a qualified securities affiliate, at least 60 percent of the foreign corporation's total gross income for the taxable year must be banking income, as defined in § 1.1296–4(f)(1), securities income, as defined in paragraph (e)(1) of this section, or gross income described in section 1296(b)(2)(B) (relating to insurance activities). For purposes of this paragraph (j)(2), the look-through rules of sections 1296(b)(2)(C) and 1296(c) do not apply.

(3) *Group income requirements.* The related group qualifies under this paragraph (j) if—

(i) At least 30 percent of the aggregate gross financial services income, as defined in § 1.904–4(e)(1), earned during the taxable year by members of the related group is securities income earned by active dealers or active brokers who are members of the related group during the current taxable year; and

(ii) At least 70 percent of the aggregate gross financial services income earned during the taxable year by members of the related group is banking income, securities income, or gross income described in section 1296(b)(2)(B) (relating to insurance activities).

(4) *Related group.* The related group is the group of persons consisting of the entity being tested under this paragraph (j) and all entities that are related within the meaning of section 954(d)(3) to such entity, substituting ''person'' for ''controlled foreign corporation'' each time the latter term appears.

(5) *Example.* The following example illustrates the rules of this paragraph (j).

Example. (i) Facts. SD is a country Y corporation that owns 85 percent of the stock of M, a country Z corporation. A, a U.S. person, owns the remaining 15 percent of the stock of M. B, C, and D, all unrelated U.S. persons, own 5, 15, and 36 percent, respectively, of the stock of SD. The rest of SD's stock is publicly held. SD is a securities dealer within the meaning of section

475(c)(1) and satisfies the licensing requirements of paragraph (b)(3)(ii) of this section. Because M's sole activity is conducting a matched book repo business, M is not a securities dealer within the meaning of section 475. For its taxable year ending December 31, 1994, SD earns $100 of gross income from trading profits and interest and dividends on inventory. For its taxable year ending December 31, 1994, M earns $50 of net interest income from its matched book repo business. SD and M earn no other income. All of SD and M's assets are held in connection with their securities businesses and none has been identified as having been held for investment.

(ii) *Securities income earned by SD.* SD is an active dealer under paragraph (b) of this section because it is a securities dealer under section 475 and satisfies the licensing requirements of paragraph (b)(3)(ii) of this section. Therefore, because SD is a controlled foreign corporation, SD's securities income is nonpassive under paragraph (a) of this section.

(iii) *Securities income earned by M.* (A) SD and M are financial services entities that are the only members of a related group as defined in paragraph (j)(4) of this section. The percentage of the SD–M related group's financial services income that is securities income earned by active dealers (SD), is 66.66 percent (($100/$150) X 100). The percentage of the SD–M related group's financial services income that is securities income, banking income (as defined in § 1.1296–4(f)), or insurance income (as defined in section 1296(b)(2)(B)) is 100 percent (($150/$150)×100). In addition, the percentage of M's income that is securities income is 100 percent (($50/$50)×100).

(B) M is a qualified securities affiliate because the gross income tests of paragraphs (j)(2) and (3) of this section are satisfied. Accordingly, because M is a controlled foreign corporation, M's securities income is nonpassive for purposes of determining whether C or D own an interest in a PFIC (whether SD or M). M is thus not a PFIC with respect to C or D because it does not meet the income or asset tests of section 1296(a). SD also is not a PFIC with respect to C or D because it does not meet the income or assets tests of section 1296(a), after applying the look-through rule of section 1296(c).

(C) However, because B owns less than 10 percent of the stock of SD, and is therefore not a United States shareholder with respect to SD under section 951(b), M's interest income is passive (even though it is securities income) for purposes of determining whether B's indirect interest in M is an interest in a PFIC. Moreover, M's interest income is passive for purposes of determining whether A owns an interest in a PFIC. As a result, M meets the income and asset tests of section 1296(a) and is therefore a PFIC with respect to A and B.

(k) *Income from nonsecurities activities.* Income derived from the conduct of activities other than securities activities described in paragraph (e)(2) of this section and income from assets held for the conduct of such other activities are nonpassive only to the extent otherwise provided in section 1296.

(l) *Effective date.* This section is effective for taxable years beginning after September 30, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–10174 Filed 4–27–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–033]

Special Local Regulation: 1995 Special Olympics World Games, Long Island Sound, New Haven, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for the 1995 Special Olympics World Games. Maritime activities held as a part of the Special Olympics World Games will take place in the waters of Long Island Sound approaching New Haven, Connecticut. The dates for these maritime activities are July 1–July 10, 1995. This regulation is needed to allow the Special Olympics World Games Committee to hold the various maritime activities associated with the 1995 Special Olympics World Games without interference from the boating public, and to protect boaters, spectators, and participants from the dangers associated with these events.

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–033), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ × 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this notice are Lieutenant(jg) Eric Doucette, Project Manager, Captain of the Port, Long Island Sound, and Lieutenant Commander F.J. Kenney, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

The 1995 Special Olympics World Games are scheduled to be held in New Haven, Connecticut, from July 1–July 10, 1995. As part of the schedule of events, various maritime activities are planned for the participants and the public. The Special Olympics World Games Committee has submitted three marine events permits to the U.S. Coast Guard. The maritime activities for which permits have been requested are to be held in the waters of Long Island Sound approaching New Haven, Connecticut. The activities include sailboat races, a Parade of Sail, and fireworks displays. Due to the inherent dangers of fireworks displays and the need for vessel control during the various races and the Parade of Sail, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants through the establishment of a proposed regulated area in New Haven Harbor and Long Island Sound.

The Coast Guard is establishing an operational order to provide for the effective coordination of the activities